



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
-----)	ISCR Case No. 08-02813
SSN: -----		
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

March 27, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 6, 2006. On July 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 11, 2008. He requested a hearing before an Administrative Judge. I received the case assignment on December 16, 2008. DOHA issued a notice of hearing on February 18, 2009, and I convened the hearing as scheduled on March 5, 2009. The Government offered Exhibits (Ex.) 1-5, which were received without objection. Applicant testified in his own behalf and presented the testimony of one witness. He submitted Exhibits (AE) A-B which were

admitted into the record. I held the record open until March 12, 2009, for any documents that Applicant wished to submit. Applicant timely submitted one document, which was marked as AE C, and entered into the record without objection. DOHA received the transcript of the hearing (Tr) on March 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated October 11, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.k of the SOR with the exception of two allegations. He denied ¶¶ 1.b and 1.h with explanations. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 38-year-old employee of a defense contractor. He graduated from high school in 1989. He has attended college on a part-time basis for several years. Applicant served in the United States Air Force (USAF) from 1993 until 1999. He has worked for his current employer since 2006 (GE 1). He held a security clearance during his time in the military.

Applicant married in 1996 and divorced in 1999. He has one child from his first marriage. He suffered some financial difficulties from the divorce. His son lived a great distance from Applicant and he traveled to visit him. This resulted in extra expenses (GE 2). Applicant also pays child support.

After Applicant left the military, he had several short periods of unemployment in 1999. He worked steadily until 2002. He remarried in 2001 and has a step-daughter. His current wife has some medical problems. She does not work outside the home at this time.

Applicant relocated in 2002 to accept new employment. However, shortly after that the company closed. Without any prospects for employment, Applicant filed for Chapter 7 bankruptcy in 2002. His debts were discharged in July 2002 (GE 2).

When he found employment later in 2002, it was not in his field and paid a low wage. He also worked for temporary agencies sporadically. Applicant's income was low and he considered himself "underemployed" from 2002 until 2005. In 2005, Applicant found himself unemployed for several periods of time. He terminated one position during that time due to a pay restructuring (Tr. 17).

Applicant's family demands have put financial pressure on him in several ways. His wife's family needed a place to stay after hurricane Katrina in 2005. He gave them financial assistance. One of the family members left Applicant with a large utility bill that Applicant had to pay (Tr. 22).

Applicant has been steadily employed with his current employer since 2006. He has had some very difficult personal situations arise that have caused additional financial problems. He had to maintain a separate residence from his wife and her step-daughter. This created additional expense for Applicant. Applicant supported his wife and her daughter in their home. His family moved to another state in 2007. He maintained two households at that time. His family moved back shortly after that because they did not like the location. They left all their belongings in an apartment. Applicant traveled a distance to the apartment and packed up all their possessions (Tr. 19).

His step-daughter is a single parent of a child who has disability. He and his wife are now caring for the child. He and his wife currently have guardianship and are in the process of obtaining custody of the grandchild. Recently his step-daughter moved back home.

The SOR alleged 9 delinquent debts, including two vehicle repossessions and a bankruptcy in 2002. The total amount of delinquent debt is over \$20,000. None of the delinquent debts are paid with the exception of one debt (allegation 1.b) in the amount of \$176.41. His credit reports confirm the delinquent debts (GE 3).

Applicant admitted that the accounts in allegations ¶¶ 1.a through 1.j are delinquent accounts. He also acknowledges that they are not paid with the exception noted above. He does not know the origin of the debt in 1.h (\$671). At this time, Applicant does not have a payment plan for any of his delinquent debts. He is also considering bankruptcy. He tried to obtain a loan consolidation but he was denied twice. He sought counseling with a consumer service but he did not have sufficient money to use the service (Tr. 23).

Applicant's current net monthly income is \$1,887.32. After his monthly expenses, he has a net remainder of \$17.32. Applicant has \$42,000 in student loans. The loans are in deferment because he is still in school. He expects to complete his undergraduate degree in about one year. At that time he will begin making payments on his student loans.

Applicant is one of the top performers in his company. His job performance is beyond reproach. He is recommended for a security clearance by his employer (Tr. 48).

Applicant's direct supervisor praises him as having an exceptional attitude. He is one of the most valued technicians in the company. He carries out his duties in an outstanding manner. He is a motivated person of great integrity (AE B).

Applicant's employer highly recommends him. He has a strong work ethic and is dedicated to his job. His efforts have produced high quality results time and time again. He is a hard-working self-starter who is a well respected member of his team. Applicant is a model employee according to his team lead (AE A). He gets along extremely well with all staff members.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2, the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG & 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG & 19(a), an inability or unwillingness to satisfy debts^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on numerous accounts. He admits that he did not meet his financial obligations from 2002 until the present with the exception of one account. His credit reports confirm that he has recent debts as well. His debts were discharged with a Chapter 7 bankruptcy in 2002. The evidence is sufficient to raise these two potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.^o Applicant’s financial worries arose from divorce, unemployment, under employment, and family crisis. While those circumstances may have precipitated the debt, the inquiry does not end at that point. He has been employed for three years with his current employer. He only paid one of his delinquent debts. He has approximately \$20,000 in delinquent debt. This potentially mitigating condition does not apply.

Under AG & 20(b), it may be mitigating where the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.^o As noted above, Applicant has had unemployment, underemployment, divorce, and a disabled grandchild who needs his help. Applicant reported that he became gainfully employed in 2006. He helped his family members resolve their financial difficulties but he did not act as responsibly as he could have in identifying and resolving his debts. His debts were

discharged with a Chapter 7 bankruptcy in 2002, which is a legitimate and legal means of resolving debt. However, since 2002, he has again unresolved delinquent debt. He admits making poor financial decisions. I find this mitigating condition partially applies.

Evidence that the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has not received formal financial counseling. He did consult a consumer credit agency to consolidate his debts. He did not have sufficient income to develop a plan with them. He tried to consolidate his delinquent bills with a loan but the loan was denied. His promises to pay in the future do not constitute evidence of financial reform or resolution of debts. I conclude these mitigating conditions partially apply.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. His payment of one delinquent SOR debt and his future plans to pay his debts are simply inadequate to fully mitigate financial consideration security concerns.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served in the military. He is highly rated by his employer. He filed for bankruptcy in 2002 due to impending unemployment and his debts were discharged in a Chapter 7 bankruptcy. He has suffered more bouts of unemployment and underemployment. He admitted that he has not said "no" to his family requests for help with their financial difficulties. He is taking care of his grandchild who has a disability. He has worked hard to support his family. He has struggled through difficult times with his family. However, he has no payment plans for his unresolved debts. He has been employed for three years with his current employer. He is trying to finish his undergraduate degree and obtain better employment.

However, he will then have student loans which will require payments. His recent efforts are not sufficient for him to meet the burden in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge